



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

FEB 16 1996

Mr. John W. Gibson
President
Oneok, Inc./Norteno Pipeline Company
Oneok Plaza
100 W 5th St
Tulsa, OK 74103

Re: CPF No. 4-2005-1003

Dear Mr. Gibson:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$27,500. It further finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. When the civil penalty is paid, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of

**Norteno Pipeline Company,
a wholly-owned subsidiary of Oneok, Inc.,**

Respondent

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) **CPF No. 4-2005-1003**
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FINAL ORDER

On July 8–10, 2003, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), conducted a pipeline safety inspection of Respondent's facilities and records pertaining to the Del Norte pipeline systems in El Paso, Texas.¹ As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated February 14, 2005, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice alleged Respondent committed violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$30,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

After requesting and receiving an extension of time to respond, Respondent responded to the Notice by letter dated March 31, 2005. Respondent contested several of the allegations and provided information concerning corrective action it had taken. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

Item 1B in the Notice alleged Respondent violated 49 C.F.R. § 192.491(c) by failing to maintain a record of each test, survey, or inspection required by 49 C.F.R. § 192.481 in sufficient detail to demonstrate the adequacy of atmospheric corrosion control measures. The Notice alleged that at the time of the inspection, Respondent was unable to provide documentation that Respondent examined exposed pipe for evidence of atmospheric corrosion

¹ The Norman Y Mineta Research and Special Programs Improvement Act, Pub. L. No 108-426, 118 Stat 2423 (2004), created the Pipeline and Hazardous Materials Safety Administration (PHMSA) and transferred the authority of RSPA exercised under chapter 601 of title 49, United States Code, to the Administrator of PHMSA. See also 70 Fed Reg. 8299, 8301-8302 (2005)

Section 192.491(c) requires Respondent to maintain a record of each test, survey, or inspection required by subpart I, including inspections required by § 192.481, in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. Section 192.481(a) requires Respondent to inspect each onshore pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, with intervals not exceeding 39 months. In its response, Respondent stated that the Del Norte pipeline system does not have portions of pipeline that are exposed to the atmosphere.² Respondent also submitted a sample of a pipeline safety inspection report for a specific location on the pipeline system (Canutillo WGI) to show that annual inspections for the Del Norte pipeline system since 2001 included inspections for atmospheric corrosion.³

Although Respondent contended that the pipeline system does not have portions of exposed pipeline, Respondent submitted a letter to OPS dated August 20, 2003 that includes pictures of exposed portions of pipeline, such as above-ground regulator stations.⁴ Accordingly, under §§ 192.481(a) and 192.491(c), Respondent must inspect each exposed locations at least once every 3 years for evidence of atmospheric corrosion and maintain a record of those inspections for at least 5 years. The documentation submitted by Respondent shows only that it had visually checked the paint conditions at the Canutillo WGI location between 2001 and 2005. The documentation does not demonstrate compliance with respect to the entire Del Norte pipeline system at the time of the OPS inspection. Accordingly, I find that Respondent violated §§ 192.491(c) and 192.481 as alleged in the Notice.

Item 2B in the Notice alleged Respondent violated 49 C.F.R. § 192.609 by failing to have documentation to show that a class location study had been performed when an increase in population density indicated a change in class location. The Notice alleged that at the time of the inspection, Respondent was unable to provide documentation to show that Respondent had performed a class location study to determine, among other things, the present class location of the Del Norte pipeline system. The Notice noted that Respondent's 2002 annual report showed six miles of pipeline in Class 2; but the OPS inspector observed that the system was more likely six miles of Class 3 and only one mile of either Class 1 or Class 2.

Section 192.609 requires Respondent to perform a class location study whenever an increase in population density indicates a change in class location for a segment of the pipeline system. In its response, Respondent submitted documentation that the Del Norte pipeline system is approximately five miles of Class 3, approximately one-half mile of Class 2, and approximately one mile of Class 1. The documentation is dated March 1, 2005, and therefore, does not demonstrate compliance at the time of the OPS inspection on July 8–10, 2003. Accordingly, I find that Respondent violated § 192.609 as alleged in the Notice.

Item 2C in the Notice alleged Respondent violated 49 C.F.R. § 192.615 by failing to have documentation to show that liaison had been established with appropriate fire, police, and other public officials. The Notice alleged that at the time of the inspection, Respondent had no record of contact with appropriate officials in New Mexico

² Response, p 2

³ Response Attachment, Tab 1

⁴ OPS Gas Pipeline Safety Violation Report, Exhibit 1

Section 192.615 requires Respondent to establish and maintain liaison with appropriate fire, police, and other public officials to: learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency; acquaint the officials with the operator's ability in responding to a gas pipeline emergency; identify the types of gas pipeline emergencies of which the operator notifies the officials; and plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

In its response, Respondent submitted documentation of training and liaison that Respondent conducted with local Texas and New Mexico public safety officials. The training and liaison took place on June 17, 2004, approximately one year after the OPS inspection. Respondent has not demonstrated that it established liaison prior to the OPS inspection on July 8–10, 2003. I find that Respondent violated § 192.615 as alleged in the Notice.

Item 2D in the Notice alleged Respondent violated 49 C.F.R. § 192.709 by failing to have documentation to show that the pipeline system had been patrolled in accordance with § 192.705. The Notice alleged that at the time of the inspection, Respondent did not have a record of the patrolling history for the Del Norte #1 pipeline.

Section 192.709 requires Respondent to maintain a record of each patrol, survey, inspection, and test required by subparts L and M, including patrols required under § 192.705, for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer. Section 192.705 requires Respondent to perform patrols to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation. Patrols are to be performed at least annually, if not more often pursuant to § 192.705(b).

In its response, Respondent submitted patrol records for the Del Norte #1 pipeline for 2002 through 2004. Respondent stated that these documents existed at the time of the inspection, but were maintained within other company records. Respondent explained that it will maintain patrol records separate from other company records in the future. Although Respondent's documentation demonstrates that the Del Norte #1 pipeline was patrolled in 2002, 2003 and 2004, Respondent did not submitted records of patrols prior to 2002. In accordance with § 192.709, Respondent must be able to produce records of patrols for at least five years prior to the OPS inspection (July 1998). Accordingly, I find that Respondent violated §§ 192.709 and 192.705 by failing to maintain for at least 5 years a record of each patrol conducted on the Del Norte #1 pipeline in 1998 through 2001.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations. The Notice proposed a total civil penalty of \$30,000 for the violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation,

degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

Item 1B in the Notice proposed a civil penalty of \$5,000 for violating 49 C.F.R. §§ 192.491(c) and 192.481. Failure to inspect exposed pipelines for evidence of atmospheric corrosion may lead to corrosive conditions on the pipeline and pipeline failure. Keeping adequate records allows Respondent to review historical conditions on the pipeline and past practices and procedures. Respondent has not submitted information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for the violation of §§ 192.491(c) and 192.481.

Item 2B in the Notice proposed a civil penalty of \$10,000 for violating 49 C.F.R. § 192.609. Class 3 and Class 4 areas are more densely populated and include places where residences, multistoried buildings, places of public assembly and playgrounds may be prevalent. As such, many pipeline safety regulations are more stringent in those areas. Failure to perform a class location study when an increase in population density indicates a change in class location jeopardizes public safety. Subsequent to the OPS inspection, Respondent achieved compliance with respect to this violation. That action alone, however, does not justify reducing the civil penalty for the violation because Respondent is under an affirmative duty to achieve compliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for the violation.

Item 2C in the Notice proposed a civil penalty of \$5,000 for violating 49 C.F.R. § 192.615. Subsequent to the OPS inspection, Respondent achieved compliance with respect to this violation. That action alone, however, does not justify reducing the civil penalty for the violation because Respondent is under an affirmative duty to achieve compliance. Respondent has not submitted information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000 for the violation.

Item 2D in the Notice proposed a civil penalty of \$10,000 for violating 49 C.F.R. §§ 192.709 and 192.705 by failing to maintain for at least 5 years a record of each patrol conducted on the Del Norte #1 pipeline. Failure to perform right-of-way patrols on a regular basis may result in a hazardous or potentially unsafe condition going undetected, such as a pipeline leak or construction activity in the vicinity of the pipeline. In its response, Respondent submitted patrol records for the Del Norte #1 pipeline for the time period from 2002 through 2004. Although Respondent could not demonstrate full compliance with §§ 192.709 and 192.705, Respondent's ability to demonstrate compliance with several years in question justifies a proportional reduction to the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$7,500 for the violation.

Having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$27,500**. I find Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

Payment of the civil penalty must be made within **20 days** of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$27,500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

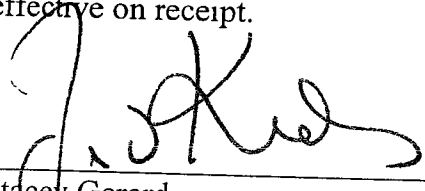
COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2B, 2C, and 2D. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. The Director, Southwest Region, OPS, has reviewed the corrective action taken by Respondent and has indicated that the corrective action has achieved compliance with respect to those violations. Accordingly, since compliance has been achieved, it is not necessary to include the compliance terms in this order.

WARNING ITEMS

The Notice did not propose a civil penalty or corrective action for Item 1A, failing to examine exposed pipe, and Item 2A, failing to keep records of abnormal operations. Therefore, these are considered warning items. Respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative action and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.

for 
 Stacey Gerard
 Associate Administrator for Pipeline Safety

FEB 16 2005

Date Issued